

IN RE: STUDENT D.S. DOE

INTERIM ORDER

Held: Student D.S. is entitled to the issuance of an Interim Protective Order to compel the East Providence School Department to enroll him in the career preparation program to which he was previously accepted at the Career and Technical Center.<sup>1</sup> This matter will be scheduled for a full hearing on the merits if a request is made by the East Providence School Department for further hearing within two weeks from the date of this decision.

Date: September 15, 2014

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<sup>1</sup> If space has become available in either of the other two programs that Student D.S. indicated as his first and second program choices, we assume that he will be admitted to such program.

### **Travel of the Case:**

This matter was appealed to the Commissioner in a letter filed by the Education Advocate for Student D.S. on September 5, 2014. It was heard by agreement of the parties on September 10 and 12, 2014. Counsel for the East Providence School Committee requested that the record remain open and that the district have opportunity for further hearing following a review by the attorney who handles its special education matters. The request for a continuance was denied, but the record will remain open for further hearing, with preservation of the rights of both parties to present additional evidence and argument at a full hearing to be scheduled, if requested.

### **Findings of Fact:**<sup>2</sup>

- D.S. is a seventeen (17) year old student who recently completed his second school year at Mount Hope High School. He has the academic status of a sophomore at Mount Hope because he has not completed the necessary twelve (12) credits or passed certain courses required to be a junior at the school. D.S. has struggled academically; he received failing grades in several courses, but has earned eleven (11) credits toward his high school diploma. D.S. has taken, and received passing grades, in English, Biology, and Chemistry in summer school during the past two summers. Pet. Ex. 3. H.O. notes.
- D.S. is a student with a disability and receives special education pursuant to an Individualized Education Program (IEP). His most recent IEP was developed at a meeting at Mount Hope High School on June 5, 2014. Pet. Ex. 4.<sup>3</sup>
- In the spring of 2014 he submitted an application for admission to the East Providence Career and Technical Center and listed three program choices on his application: landscaping, construction, and auto collision repair. Pet. Ex. 1. He discussed his desire to pursue a “trade” and his goal of becoming self-supporting with his education advocate and his guidance counselor at Mount Hope High School at a meeting on March 13, 2014. Pet. Ex. 10.

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<sup>2</sup> Because of the timeframe imposed by statute on the issuance of interim orders and because D.S. is currently not receiving FAPE and in fact is not attending school at all, this decision is made without the benefit of a transcript and is based on the exhibits submitted into evidence and the hearing officer’s notes (H.O. notes)

<sup>3</sup> The IEP submitted on the first day of hearing consisted of the first 14 pages of a 17 page document. On the second day of hearing, the full IEP was substituted as Pet. Ex. 4.

- On June 16, 2014 a letter of acceptance was sent to the parent<sup>4</sup> of D.S., indicating that he was accepted into the Auto Collision Repair program at the East Providence Career and Technical Center for the 2014-2015 school year. The letter indicated that his acceptance was “based on (his) meeting PBGR requirements”. Pet. Ex. 2.
- On August 28, 2014 D.S. and his education advocate met with the Director of the Career and Technical Center and a guidance counselor. They agreed that D.S. would be on “probation”<sup>5</sup> for the first quarter and that at the end of the quarter a meeting would be scheduled to review his status. Pet. Ex.5.
- On September 2, 2014, two days before the start of school, a letter was sent to the Director of Special Services at Mount Hope High School indicating that D.S. was being denied admission “due to (his) current academic standing and lack of Carnegie unit’s (sic) necessary to meet PBGR”. A copy of the letter was mailed to the director of the group home where he resides and then forwarded to his education advocate. Pet. Ex. 6. The Director of the Career and Technical Center also called his education advocate to advise her of this decision. H.O. notes.
- School officials at the East Providence Career and Technical Center found D.S. ineligible for admission because in their view he is a junior and he has only two years in which to meet graduation requirements (PBGR) in East Providence. The district’s graduation requirements are described in the Program of Studies on the school’s website. According to the Center’s calculation of his academic standing, D.S. is now entering his junior year and therefore must be scheduled for the required core academic courses so that he can successfully complete them and earn the required twenty-four (24) credits to graduate in June of 2016. Resp. Ex. B; H.O. notes.
- The scheduling of core academic courses required for graduation in June of 2016 precludes D.S. from taking any of the elective courses that comprise the CTC program in Auto Collision Repair. Resp. Ex. B; H.O. notes.

### **DECISION**

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<sup>4</sup> D.S. is currently in the custody of the Department of Children, Youth and Families and resides at a group home in Warren, Rhode Island. He has an education advocate appointed for children with disabilities who are in DCYF custody. His advocate filed the Petition for an Interim Order and appeared at both hearings to present his case and advocate for his educational needs.

<sup>5</sup> The probation was not because of this student’s disciplinary record, but was based on D.S.’ history of academic struggle. H.O. notes.

Discussion of the positions of the parties, the issues raised by this Interim Order request and our findings is condensed due to the time constraints imposed on interim order decisions.

According to the testimony of the guidance counselor at the East Providence Career and Technical Center, D.S. would be in the eleventh grade if he attends school in East Providence this year. His academic standing as a junior is based on the number of credits (11) that he has accrued during his two years at Mount Hope High School. It was on this basis that the counselor, in good faith, constructed a class schedule for D.S. for the upcoming two school years that consisted of core academic subjects, to the exclusion of the electives that comprise the career preparation program D.S. had chosen. His assumption in creating this schedule was that the coursework required for graduation had to be completed by June of 2016. Hence, the Director of the CTC, Karen Mellen, reached the conclusion that D.S. could not be accepted due to his current academic standing and lack of Carnegie units necessary to meet PBGR.

District staff testified that they did not have confirmation that D.S. had an IEP and was IDEA eligible until the first day of hearing. It is not clear from the record exactly how this information would have impacted his schedule of courses or the decision with respect to his acceptance into the CTC program.<sup>6</sup>

From the Petitioner's perspective, it was unnecessary to create a school schedule for this year based on an assumption that D.S. must graduate in June of 2016. This is especially unreasonable and unfair since, if the district does so, he will not be able to enroll in the career and technical program he seeks and to which he was previously admitted. The Petitioner submits that because of his special education needs and his academic struggles, it has been and is still anticipated that D.S. will not graduate from high school in four years, but rather in five years. He has persevered and taken summer school classes over the past two summers. He was excited at the prospect of going to the

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<sup>6</sup> It is also not clear from the record whether the policy of exclusion from acceptance at the Career and Technical Center in East Providence applies to every student who seeks acceptance and needs to make up substantial academic work in order to graduate "on time". We would note that the policy of the Board of Education has moved beyond "seat time" and the accumulation of credits to proficiency-based graduation requirements. See "Regulations of the Board of Regents for Elementary and Secondary Education: K-12 Literacy, Restructuring of the Learning environment at the middle and high school levels, and proficiency based graduation requirements (PBGR) at High Schools". We infer from these Regulations that the expectation is that some general education students will remain in high school for more than four (4) years. Clarity with respect to this expectation may affect ongoing determinations of eligibility for admission of students to the East Providence CTC as well as approved programs of career and technical education in other school districts.

Career and Technical Center's program in Auto Collision Repair and extremely disappointed to learn of his disqualification at the eleventh hour.

As a student with a disability, D.S. is eligible to attend high school and receive a free appropriate public education until he attains the age of twenty-one (21) or until he receives a regular high school diploma. Reg.300.101. His right of access to the career and technical program of his choice should not be foreclosed by a course schedule that is based on a June, 2016 graduation date when in fact he is eligible to receive a free appropriate public education until the conclusion of the semester in which he turns twenty-one (21), i.e. June of 2018. For him, the assumption of a graduation date in June of 2016 is unreasonable, unfair and invalidly restricts his access to career and technical education programming.

By state statute and regulation, the right of access of Rhode Island students to career and technical education is explicit. Rhode Island General Laws provide:

#### **16-45-1.1 Declaration of policy**

...(d) the following principles apply to the development and operation of all vocational programs, activities and services:

(1)(i) Access. All youth and adults who choose vocational education shall have access to those programs....

(iii) A full range of programs and supplemental services shall be provided for those students whose previous achievements and preparation indicate that additional support is necessary for them to succeed in vocational education

(iv) Admissions criteria and assessment procedures shall promote equal access, enrollment, and participation in vocational programs regardless of age, sex, race, limited English proficiency, disadvantage, or disability...

In addition, the "Regulations of the Board of Regents Governing Career and Technical Education in Rhode Island (effective July, 2012) state:

5.1 Access to Career Preparation Programs: All students shall have the right to request, from their resident LEA, access to a RIDE-approved career preparation

program of their choice. This right of access shall be limited only by the following three conditions...

(3) Fair, equitable and reasonable admission standards: LEA's operating RIDE-approved career preparation programs are authorized to set reasonable, fair, equitable, and program-appropriate admission standards in accordance with section 5.3 of these regulations.

In applying the language of the statute and Regulations to the facts in the record, we find that this student's disqualification from admission to the CTC program in Auto Collision Repair, based on his academic standing and lack of credits to meet PBGR requirements is unreasonable and unfair. He should not be disqualified from admission because he needs to make up credits in core academic subjects before he ultimately meets the requirements for a high school diploma. He is legally entitled to a longer period of time to meet these requirements. His educational programming and schedule of services should be constructed in such a way that he continues to work toward graduation requirements, has access to the career and technical program of his choice and accomplishes the goals set forth in his IEP. In light of his enrollment in a career preparation program at the CTC in East Providence, his IEP team should convene to consider if any amendments to his IEP are necessary to accomplish these objectives.

This decision is issued as an Interim Protective Order that recognizes the right of the district to notify the hearing officer of its desire to present additional evidence and legal argument, provided that notice of this request for additional hearing is made within two weeks of the date of this decision. This decision does not preclude the district from raising placement issues in the appropriate forum.

For the Commissioner

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Kathleen S. Murray, Hearing Officer

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Deborah A. Gist, Commissioner

DATE: September 15, 2014